

COMMITTEE STATEMENT

LB 1432

HEARING DATE: February 15, 2000

COMMITTEE ON: Agriculture

TITLE: (Agriculture Committee, Coordsen, Wehrbein) Adopt the Agricultural Suppliers Lease Protection Act

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

6	Yes	Senators Cudaback, Dickey, Dierks, Janssen, Schrock, and Vrtiska
0	No	
1	Present, not voting	Senator Hilgert
1	Absent	Senator Chambers

PROPONENTS

Senator Cap Dierks
Glenn Prinz
Pat Ptacek
Roger Heideman
Rick Wade
Jon Kruse
Tim Gubbels
Mary Sommermeyer
Rich Lombardi
Tina Domeier

REPRESENTING

Introduce for Agriculture Committee
Nebraska Grain & Feed Dealers Association
Nebraska Grain & Feed Association
Nebraska Grain & Feed Association
Nebraska Cooperative Council
Nebraska Fertilizer & Agricultural Chemical Inst.
Nebraska Grain & Feed Association
League of Nebraska Municipalities
Center for Rural Affairs
Bruning Grain & Feed Company

OPPONENTS

Denny Brown
Diane Knutson
Bill Peters

REPRESENTING

Union Pacific Railroad
Union Pacific Railroad
Burlington Northern/Santa Fe Railroad

NEUTRAL

None

REPRESENTING

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SUMMARY OF PURPOSE AND/OR CHANGES:

LB 1432 creates the Agricultural Suppliers Lease Protection Act. The bill establishes a dispute resolution process for controversies regarding lease terms and conditions arising between owners of railroad property and certain tenants upon such property.

The bill declares a public purpose in maintaining reasonable lease terms for agricultural tenants upon rail property and remedying unequal bargaining positions between railroads (or their successors in interest) when negotiating lease terms and conditions. LB 1432 provides that any controversies regarding lease terms and conditions arising between a railroad, or its successor in interest, and an agricultural tenant (defined by the bill to include grain warehouses and other agricultural supply businesses) having improvements upon a present or former railroad right-of-way shall be resolved by negotiation or by order of the Department of Agriculture.

The bill provides that either party to a lease dispute may file a complaint with the Department of Agriculture if the dispute is not resolved after a 60-day negotiation period. The Department shall investigate the matter and make such order as the facts warrant. The Department shall perform its dispute resolution functions according to contested case procedures under the Administrative Procedures Act.

The bill further provides that current agricultural tenants shall have the opportunity to match competing lease offers and shall be compensated by the lessor or new lessee for the fair market value of the tenant's improvements if a lease is terminated without cause or the property is leased to another tenant. Determination of fair market value is also a controversy resolvable through the mechanisms of the bill.

Finally, section 75-109 is amended to clarify that the Public Service Commission's regulatory responsibilities over common carriers does not include disputes governed by the Agricultural Suppliers Lease Protection Act.

EXPLANATION OF AMENDMENTS, IF ANY:

The committee amendments make the following substantive and technical changes:

1. A definition section is added for key terms used in the Act. The definition of "railroad land" is clarified to limit the definition to right-of-way strips of land and adjacent properties acquired by a railroad to accommodate railroad operations and currently occupied by tenants having improvement thereon. The definition of "agricultural tenant" is transferred to the definition section.
2. "Controversies regarding lease terms and conditions" resolvable according to the mechanisms of the bill is modified to apply only to "application and reasonableness" of

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lease terms and conditions. The change is intended to exclude potential peripheral controversies (for example, tort liabilities) not related directly to rental rates and other lease terms that may arise between the lessor and tenant.

3. Changes the tolling period for exhausting negotiation before a dispute may be submitted to the Department of Agriculture. The original bill begins the period when either party request negotiation in writing. Under the amendment, the 60-day negotiation begins when the lessor notifies the tenant that is intends to revise or terminate the lease relationship.

4. Language allowing a tenant to match competing lease offers is changed to provide that an agricultural tenant shall have an opportunity to renew a lease at fair market value. Determination of fair market value may be determined by the Department of Agriculture according to the mechanisms of the bill. The bill provides that a tenant is not entitled to compensation for improvements if the tenant refuses to renew lease at fair market value.

5. A new section is added to provide that the Agricultural Suppliers Lease Protection Act does not apply to leases in effect prior to the date of enactment of the bill, or to extension or renewal of existing leases upon the same terms. The bill would apply to renewal or extension of leases on different terms or material modification effected after the Act's effective date.

6. A new provision is added to provide that costs incurred by the Department in resolving a controversy shall be paid equally by the parties.

Senator